

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DANIEL CLAY,

Plaintiff,

v.

9:13 -CV-1314 (BKS/CFH)

**B. SCHWEBLER, *Correctional Counselor; Coxsackie
Correctional Facility,***

Defendant.

APPEARANCES:

OF COUNSEL:

Daniel Clay, *Plaintiff pro se*
99-A-0386
Sing Sing Correctional Facility
354 Hunter Street
Ossining, NY 10562

Hon. Eric T. Schneiderman
New York State Attorney General
The Capitol
Albany, NY 12224

Melissa A. Latino, Esq.
Assistant Attorney General

Hon. Brenda K. Sannes, United States District Court Judge

ORDER

On November 13, 2014, plaintiff Daniel Clay filed a pro se amended complaint under 42 U.S.C. § 1983 asserting that defendant B. Schwebler, a correctional counselor at Coxsackie Correctional Facility, violated plaintiff's constitutional rights under the First, Sixth and Fourteenth Amendments. (Dkt. No. 24). On January 16, 2015, defendant filed a motion to dismiss the complaint under Fed. R. Civ. P. 12(b)(6) for, *inter alia*, failure to state a cause of action. (Dkt. No. 31). The motion was referred to United States Magistrate Judge Christian F.

Hummel who, on April 21, 2015, issued a Report-Recommendation and Order, recommending that defendant's motion to dismiss be granted and that plaintiff's claim be dismissed in its entirety, with prejudice. (Dkt. No. 40). Magistrate Hummel advised the parties that they could file objections to the report, and that the failure to file objections within fourteen days would preclude appellate review. (*Id.*, p. 10) The Report-Recommendation and Order was served on plaintiff by regular mail on April 21, 2015. At plaintiff's request, the Court granted three extensions of time to file objections to the Report-Recommendation. (Dkt. Nos. 42, 44 and 46). No objections to the Report-Recommendation have been filed and the final deadline to submit objections expired on July 16, 2015. (Dkt. No. 46).

Since no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court has reviewed the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 229 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to the 1983 addition. Under this standard, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.* Having reviewed the Report-Recommendation and having found no clear error, it is hereby:

ORDERED that the Report-Recommendation (Dkt. No. 40) is **ADOPTED** in its entirety for the reasons stated therein; and it is further

ORDERED that defendant's motion to dismiss (Dkt. No. 31) is **GRANTED**, and that plaintiff's amended complaint (Dkt. No. 24) is **DISMISSED** in its entirety, with prejudice; and it is further

ORDERED that the Clerk of the Court shall serve a copy of this Order upon plaintiff in accordance with the local rules; and it is further

ORDERED that the Clerk of the Court shall close this case.

IT IS SO ORDERED.

Dated: July 21, 2015
Syracuse, New York

A handwritten signature in black ink, reading "Brenda K Sannes". The signature is written in a cursive style with a horizontal line underneath the name.

Brenda K. Sannes
U.S. District Judge